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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 18th June, 1993/Jyaistha 28, 1915 (Saka)

THE CONSUMER PROTECTION (AMENDMENT) ORDINANCE, 1993

No. 24 OF 1993

Promulgated by the President in the Forty-fourth Year of the Republic of India.

An Ordinance further to amend the Consumer Protection Act, 1986.

WHEREAS a Bill further to amend the Consumer Protection Act, 1986, has been introduced in Parliament but has not yet been passed.

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action to give effect to the provisions of the Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. (*1*) This Ordinance may be called the Consumer Protection (Amendment) Ordinance, 1993.

(*2*) It shall come into force at once.

Amendment of section 2.

68 of 1986.

2. In section 2 of the Consumer Protection Act, 1986 (hereinafter referred to as the principal Act), in sub-section (*1*),—

(*1*) for clause (a), the following clause shall be substituted, namely:—

(*a*) "appropriate laboratory" means a laboratory or ogranisation—

(*i*) recognised by the Central Government.

(*ii*) recognised by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or

(*iii*) any such laboratory or organisation established by or under any law for the time being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

(*2*) after clause (a), the following clause shall be inserted, namely:—

'(aa) "branch office" means—

(*i*) any establishment described as a branch by the opposite party; or

(*ii*) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;';

(*3*) in clause (b), after sub-clause (iii), the following sub-clause shall be inserted, namely:—

"(*iv*) one or more consumers, where there are numerous consumers having the same interest;";

(*4*) in clause (c),

(*A*) for sub-clause (*i*), the following sub-clause shall be substituted, namely:—

"(*i*) an unfair trade practice or a restrictive trade practice has been adopted by any trader;";

(*B*) in sub-clause (*ii*), for the words "the goods mentioned in the complaint", the words "the goods bought by him or agreed to be bought by him" shall be substituted;

(*C*) in sub-clause (*iii*), for the words "the services mentioned in the complaint", the words "the services hired or availed of or agreed to be hired or availed of by him" shall be substituted;

(*D*) after sub-clause (*iv*), the following sub-clause shall be inserted, namely:—

"(*v*) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.";

(5) in clause (d),—

(A) in sub-clause (ii), for the word "hires", in both the places where it occurs, the words "hires or avails of" shall be substituted;

(B) after sub-clause (ii), the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—For the purposes of sub-clause (*i*), "commercial purpose" does not include use by a consuemr of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;';

(6) in clause (*f*), after the words "for the time being in force or", the words "under any contract, express or implied, or" shall be inserted;

(7) after clause (*j*), the following clause shall be inserted, namely:—

'(*jj*) "member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;';

(8) after clause (*n*), the following clause shall be inserted, namely:—

'(*nn*) "restrictive trade practice" means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services;';

(9) in clause (o), after the words "board or lodging or both,", the words "housing construction," shall be inserted;

(10) for clause (*r*), the following clause shall be substituted, namely:—

'(*r*) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(1) the practice of making any statement, whether orally or in writing or by visible representation which,—

(*i*) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(*ii*) falsely represents that the services are of a particular standard, quality or grade;

(*iii*) falsely represents any re-bulit, second-hand, renovated, reconditioned or old goods as new goods;

(*iv*) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(*v*) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;

(*vi*) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(*vii*) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof;

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(*viii*) makes to the public a representation in a form that purports to be—

(*i*) a warranty or guarantee of a product or of any goods or services; or

(*ii*) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(*ix*) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(*x*) gives false or misleading facts disparaging the goods, services or trade of another person.

Explanation.—For the purposes of clause (1), a statement that is—

(*a*) expressed on an article offered or displayed for sale, or on its wrapper or container; or

(*b*) expressed on anything attached to, inserted in, or accompanying an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or

(c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by, the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation.—For the purposes of clause (2), "bargaining price" means—

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.'.

Amendment of section 4.

3. In section 4 of the principal Act, in sub-section (2), in clause (a), for the words "the Department of Food and Civil Supplies", the words "consumer affairs" shall be substituted.

Amendment of section 5.

4. In section 5 of the principal Act, in sub-section (*1*), for the words "not less than three meetings", the words "at least one meeting" shall be substituted;

Amendment of section 6.

5. In section 6 of the principal Act,—

(*i*) in clause (*a*), after the word "goods", the words "and services" shall be inserted;

(*ii*) in clause (*b*), after the word "goods", the words "or services, as the case may be," shall be inserted;

(*iii*) in clause (*c*), after the word "goods", the words "and services" shall be inserted;

(*iv*) in clause (*e*) after the words "unfair trade practices", the words "or restrictive trade practices" shall be inserted.

Amendment of section 7.

6. In section 7 of the principal Act, for sub-section (2), the following sub-sections" shall be substituted, namely:—

"(*2*) the State Council shall consist of the following members, namely:—

(*a*) the Minister incharge of consumer affairs in the State Government who shall be its Chairman;

(*b*) such number of other official or non-official members representing such interests as may be prescribed by the State Government.

(*3*) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(*4*) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.".

Amendment of section 9.

7. In section 9 of the principal Act,—

(*1*) in clause (*a*),—

(*i*) the words "with the prior approval of the Central Government" shall be omitted;

(*ii*) the following proviso shall be inserted at the end, namely:—

"Provided that the State Government may, if it deems fit, establish more than one District Forum in a district.";

(*2*) in clause (*b*), the words "with the prior approval of the Central Government" shall be omitted.

Amendment of section 10

8. In section 10 of the principal Act,—

(*1*) for sub-section (1), the following sub-section shall be substituted namely:—

"(*1*) Each District Forum shall consist of,—

(*a*) a person who is, or who has been, or is qualified to be, a District Judge, who shall be its President;

(*b*) two other members, shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.".

(*2*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A* Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

(*i*) the President of the State Commission—Chairman,

(*ii*) Secretary, Law Department of the State—Member,

(*iii*) Secretary incharge of the Department dealing with dealing with consumer affairs in the State—Member.".

9. In section 11 of the principal Act,— Amendment of section 11.

(*1*) in sub- section (1), for the words "is less than rupees one lakh", the words "does not exceed rupees five lakhs" shall be substituted;

(*2*) in sub-section (*2*),—

(*i*) in clause (*a*), for the words "carries on business or", the words "carries on business or has a branch office or" shall be substituted;

(*ii*) in clause (*b*),—

(*A*) for the words "carries on business", the words "carries on business or has a branch office" shall be substituted;

(*B*) for the words "carry on business", the words "carry on business or have a branch office" shall be substituted.

10. For section 12 of the principal Act, the following section shall be substituted namely:— Substitution of new section for section 12.

'12. A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum, by— Manner in which complaint shall be made.

(*a*) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(*b*) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central or the State Government.

Explanation.—For the purposes of this section, "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force.'. 1 of 1956.

Amendment of section 13.

11. In section 13 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.". 5 of 1098.

Amendment of section 14.

12. In section 14 of the principal Act, in sub-section (1),—

(i) in the opening portion, for the word "take", the word "do" shall be substituted;

(ii) after clause (d), the following clauses shall be inserted, namely:—

"(e) to remove the defects or deficiencies in the services in in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(i) to provide for adequate costs to parties.".

Amendment of section 16.

13. In section 16 of the principal Act, in sub-section (1),—

(i) in clause (a), the following proviso shall be inserted at the end, namely:—

"Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;";

(ii) after clause (b), for the proviso, the following proviso shall be substituted, namely:—

"Provided that every appointment made under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:—

(i) President of the State Commission—Chairman.

(*ii*) Secretary of the Law Department of the State —Member,

(*iii*) Secretary, incharge of Department dealing with consumer affairs in the State —Member.";

(*iii*) in sub-section (*2*), the brackets and words "(including tenure of office)" shall be omitted;

(*iv*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) Every member of the State Commission shall hold Office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for re-appointment.

(*4*) Notwithstanding any thing contained in sub-section (*3*), a person appointed as a President or a member before the commencement of the Consumer Protection (Amendment) Ordinance, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.".

Amendment of section 17.

14. In section 17 of the principal Act, in clause (*a*), in sub-clause (*i*), for the words "one lakh but does not exceed rupees ten lakhs", th words "five lakhs but does not exceed rupees twenty lakhs" shall be substituted.

Amendment of section 18.

15. In section 18 of the principal Act, for the words and figures "The procedure specified in sections 12, 13 and 14 and under the rules made thereunder", the words and figures "The provisions of sections 12, 13 and 14 and the rules made thereunder" shall be substituted.

Amendment of section 20.

16. In section 20 of the principal Act,—

(*i*) in sub-section (*1*),—

(*A*) in clause (*a*), the following proviso shall be inserted at the end, namely:—

"Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of India;";

(*B*) after clause (*b*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following namely:—

(*a*) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India —Chairman,

(*b*) the Secretary in the Department of Legal Affairs in the Government of India —Member,

(*c*) Secretary of the Department dealing with consumer affairs in the Government of India —Member.";

(*ii*) in sub-section (*2*), the brackets and words "(including tenure of office)" shall be omitted;

(*iii*) after sub-section (*2*), the following sub-sections shall be inserted, namely:—

"(*3*) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re-appointment.

(*4*) Notwithstanding anything contained in sub-section (3), a person appointed as a President or a member before the commencement of the Consumer Protection (Amendment) Ordinance, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.".

Amendment of section 21.

17. In section 21 of the principal Act, in clause (a), in sub-clause (i), for the words "ten lakhs", the words "twenty lakhs" shall be substituted.

Substitution of new section for section 22.

18. For section 22 of the principal Act, the following section shall be substituted, namely:—

Power of and procedure applicable to the National Commission.

"22. The National Commission shall, in the disposal of any complaints or any proceedings before it, have—

(*a*) the powers of a civil court as specified in sub-section (4), (5) and (6) of section 13;

(*b*) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clause (a) to (i) of sub-section (1) of section 14;

and follow such procedure as may be prescribed by the Central Government.".

Insertion of new sections 24A and 24B.

19. After section 24 of the principal Act, the following sections shall be inserted, namely:—

Limitation period.

"24A. (*1*) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within one year from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complaint satisfies the District Forum, the State Commissioner or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

Provided that no such complaint shall be entertained unless the District Forum, the State Commission or the National Commission, as the case may be, records its reasons for condoning such delay.

Administrative control.

24B. (*1*) The National Commissioned shall have administrative control over all the State Commissions in the following matters, namely:—

(*i*) calling for periodical returns regarding the institution, disposal, pendency of cases;

(*ii*) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgements written in any language, speedy grant of copies of documents;

(*iii*) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(*2*) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (*1*).".

Substitution of new section for section 26.

20. For section 26 of the principal Act, the following section shall be substituted, namely:—

Dismissal of frivolous or vexatious complaints.

"26. Where a complaint instituted before the District Forum, the State Commission or the National Commission, as the case may be, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.".

Amendment of section 27.

21. In section 27 of the principal Act,—

(*a*) after the words "against whom a complaint is made", the words "or the complainant" shall be inserted;

(*b*) after the words "such trader or person", the words "or complainant" shall be inserted.

Amendment of section 30.

22. In section 30 of the principal Act,—

(*a*) in sub-section (*1*), after the words "the provisions contained in", the words, brackets, letter and figures "clause (*a*) of sub-section (*1*) of section 2" shall be inserted;

(*b*) in sub-section (*2*), after the words "the provisions contained in", the words, brackets, letter and figures "clause (b) of sub-section (*2*) and sub-section (*4*) of section 7" shall be inserted.

SHANKER DAYAL SHARMA,
President.

A. C. C. UNNI,
Additional Secretary to the Govt. of India.

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